

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2912 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
NARAN SANGA RABARI

Versus

DISTRICT MAGISTRATE

-----  
Appearance:

MS DR KACHHAVAH , Advocate, for the Petitioner.

MR.UR BHATT,AGP, for the Respondents.

-----  
CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 09/07/96

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed by Naran Sanga Rabari (hereinafter referred to as "the detenu") challenging the legality and validity of the order of detention dated 8-2-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the said Act"). The said order has been passed by the District Magistrate,

Rajkot, who , after considering three criminal cases registered against the detenu under Chapter XVI and XVII of the Indian Penal Code and the statements of nine witnesses, reached the conclusion that the detenu is a "dangerous person " within the meaning of section 2 (c) of the said Act , and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him.\ and, therefore, the impugned order is passed, which is under challenge in the present petition.

Now, this petition is required to be allowed on the ground that the copies of the bail applications in two cases in which the detenu was released on bail have not been supplied to the detenu and that they were not considered by the the detaining authority . Miss Kachhavah submitted that non-consideration of these vital documents has violated the fundamental right of the detenu of making an effective representation under Article 22 (5) of the Constitution of India and consequently therefore the continued detention of the detenu has become illegal.

Now, in the instant case, as stated above, three criminal cases being C.R.Nos. 33/95, 34/95 and 35/95 have been registered against the detenu on 9-8-95, 11-8-95 and 11-8-95, respectively. It is not in dispute that the detenu was released on bail on 8-9-95. It can further be seen from the documents supplied to the detenu that bail applications in Criminal Cases Nos.33/95 and 35/95 were not supplied to the detenu. Mr. Bhatt, learned AGP, for the respondents, does not dispute this fact. The Supreme Court in M.Ahamedkutty vs Union of India and another 1990 (2) SCC p.1 has ruled that bail application and bail order constitute vital material and non-consideration thereof by the detaining authority or non-supply of the copies thereof to the detenu would be violative of Article 22 (5) of the Constitution of India resulting in the continued detention of the detenu illegal. In view of this decision, since copies of the bail applications in Criminal Cases Nos.33/95 and 35/95 having not been supplied to the detenu, I am, therefore, of the opinin that this has resulted in violation of the right of the detenu guaranteed under Article 22 (5) of the Constitution of India of making an effective representation against the detention of the detenu , and the continued detention of the detenu has therefore become illegal.

In the result, this petition is allowed. The impugned order of detention dated 8-2-96 is quashed and set aside. The detenu Naran Sanga Rabari is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

o-o-o-o-o-o

True copy